



# **2025 FALL CONFERENCE**

**NOVEMBER 13-14**

**MARRIOTT MARQUIS  
NEW YORK CITY**

# Discoverability of Information in Coverage Litigation:

Recent Trends Regarding Reinsurance,  
Reserves, and Privileged Communications

November 13, 2025

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A low-angle, upward-looking photograph of several modern skyscrapers with glass facades, set against a clear blue sky. The image is heavily stylized with large, semi-transparent geometric shapes in various shades of blue and red. These shapes, including circles, rectangles, and diagonal bands, are layered over the building images, creating a dynamic and abstract composition. The word "INTRODUCTION" is centered in a bold, white, sans-serif font.

# INTRODUCTION

## ***U.S. Fire Ins. Co. v. Bunge North America, Inc., 244 F.R.D. 638 (D. Kan. 2007)***

### **Parties:**

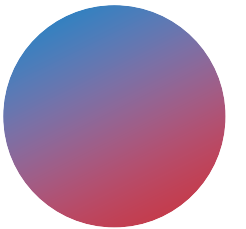
Plaintiffs: Excess liability insurers, including U.S. Fire Insurance Co. and others.

Defendant: Bunge North America, Inc. (“Bunge”), the insured. Additional defendants: Various primary and excess liability insurers.

### **Underlying Dispute:**

Bunge faced environmental liability for groundwater contamination arising from the operation of three grain elevator sites in Kansas.

Excess liability insurers filed a declaratory judgment action seeking a ruling that they had no obligation to defend, indemnify, reimburse, or pay Bunge for a settlement of those claims.



# ***Mandarin Oriental, Inc. v. HDI Global Insurance Co. (S.D.N.Y. June 10, 2025)***

## **Parties:**

Plaintiff: Mandarin Oriental, Inc. (“Mandarin”)

Defendants: HDI Global Insurance Company (“HDI”) and Assicurazioni Generali S.p.A. (“Generali”)

## **Underlying Dispute:**

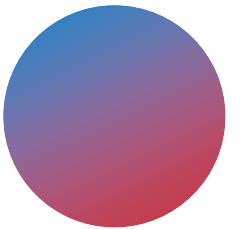
Mandarin operates hotels in Miami, New York, Washington, DC, and Boston.

It purchased “all risks” commercial insurance policies from HDI (coverage May 1, 2018–May 1, 2020) and Generali (coverage May 1, 2016–May 1, 2021).

The policies include Endorsement No. 3, which provides a \$10 million per-occurrence sublimit for losses caused by infectious or contagious disease within a 5-mile radius.

Mandarin alleges that COVID-19 caused business-interruption losses in early 2020 and seeks tens of millions of dollars, claiming HDI and Generali are liable for their respective quota shares (25% and 10%) of the \$10 million sublimit for each hotel.

Defendants have not issued a formal coverage opinion and have reserved their rights.





The background features a low-angle shot of several tall skyscrapers reaching towards a clear blue sky. The image is overlaid with a complex pattern of semi-transparent geometric shapes in various shades of blue and red, creating a modern, architectural feel. The text is centered within this composition.

# DISCUSSION OF REINSURANCE CONTRACTS AND COMMUNICATIONS

*U.S. Fire Ins. Co. v. Bunge North America, Inc.*, 244 F.R.D. 638 (D. Kan. 2007)

## QUESTION:

Are reinsurance agreements discoverable under Rule 26(a)(1)?

### FRCP Rule 26

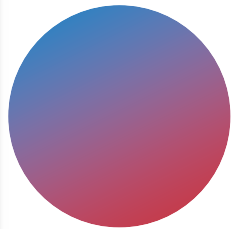
(a) REQUIRED DISCLOSURES.

(1) *Initial Disclosure.*

(A) *In General.* Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

...

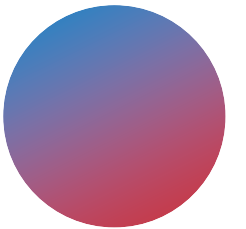
(iv) ... any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.



***U.S. Fire Ins. Co. v. Bunge North America, Inc., 244 F.R.D. 638 (D. Kan. 2007)***

**HOLDING:**

*Any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.*

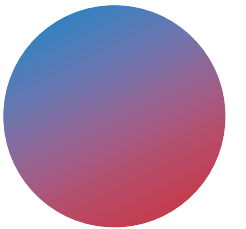




## *U.S. Fire Ins. Co. v. Bunge North America, Inc., 244 F.R.D. 638 (D. Kan. 2007)*

### **Contracts and Communications Considerations:**

- 1. Reinsurance agreements** – Held discoverable under Fed. R. Civ. P. 26(a)(1)(D).
- 2. Communications with reinsurers** – Found relevant to issues such as late notice, bad faith claims, liability assessments, and lost policies.
- 3. Claims handling manuals** – Could show how insurers interpret policy language or handle claims.
- 4. Document retention policies** – Potentially relevant to bad faith and lost policies.



## *Mandarin Oriental, Inc. v. HDI Global Insurance Co. (S.D.N.Y. June 10, 2025)*

### **QUESTION:**

To what extent are an insurer's internal communications and documents discoverable by the insured in litigation involving alleged breach of contract and bad faith?

#### **FRCP Rule 26**

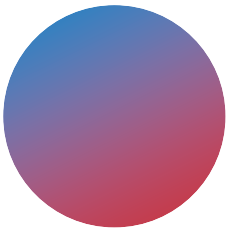
(b) DISCOVERY SCOPE AND LIMITS.

(1) Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

## *Mandarin Oriental, Inc. v. HDI Global Insurance Co. (S.D.N.Y. June 10, 2025)*

### **HOLDING:**

*To the extent that Defendants' continued searches locate any communications with their reinsurers ... the Court overrules Defendants' relevance objection and directs Defendants to produce those communications unless another viable ground for withholding, such as privilege, exists.*

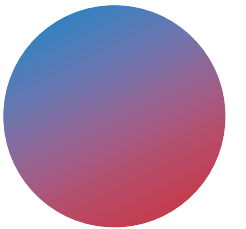




## *Mandarin Oriental, Inc. v. HDI Global Insurance Co. (S.D.N.Y. June 10, 2025)*

### **Contracts and Communications Considerations at Issue:**

- 1. Reinsurance Agreements** – Relevant; produce unless valid privilege established.
- 2. Emails with adjusters/accountants and/or non-attorney insurance company staff** – Many must be produced; only true legal advice remains protected.
- 3. Attorney-Client/Work Product Claims** – Narrowly construed; unsupported conclusory assertions rejected.



## Additional Case Law

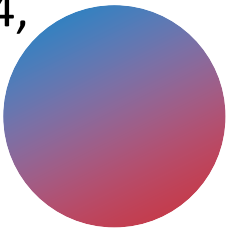
### Reinsurance agreements / communications discoverable

*Sinclair, Inc. v. Continental Casualty Co.*, No. 1:24-cv-03003-SAG (D. Md. Apr. 28, 2025): Policies and communications discoverable. Case involved bad faith claim. Court limited disclosure.

*Divinity v. Bridgefield Casualty Insurance Co.*, 3:24-cv-00522-LGI (S.D. Miss. Apr. 28, 2025): Agreement discoverable under initial disclosure requirement of FRCP 26.

*Clarendon Natl. Ins. Co. v. Atlantic Risk Mgt., Inc.*, 59 A.D.3d 284, 285-86 (1st Dep't 2009): Agreement discoverable under a strict reading of CPLR 3101(f).

*Discover Prop. & Cas. Co. v. NFL*, 2019 N.Y. Slip Op. 32930[U], at \*8-9 (Sup Ct., NY County, Oct. 4, 2019) (Masley, J.): Agreements and communications discoverable. Policyholder alleged bad faith.



## Additional Case Law

### Reinsurance agreements / communications NOT discoverable

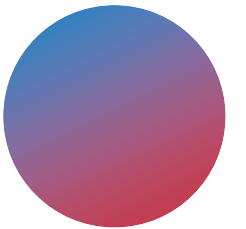
*U.S. Fire Ins. Co. v. City of Warren*, No. 2:10-cv-13128, 2012 WL 1454008 (E.D. Mich. Apr. 26, 2012): Information not discoverable because "reinsurance involves a business decision, not a legal determination regarding policy interpretation or coverage." No bad faith claim.

*TIG Ins. Co. v. Tyco Int'l.*, No. 3:08-cv-1584, 2010 WL 4683594 (M.D. Pa. Nov. 12, 2010): Agreement not discoverable. Not relevant to dispute regarding interpretation of underlying policy. No bad faith claim.

*Certain Underwriters at Lloyd's v. Nat'l Railroad Passenger Corp.*, 2016 WL 2858815, at \*18 (E.D.N.Y. May 16, 2016) : Communications not discoverable. Insured argued it needed communications "in order to identify policies and policy terms" but did not connect the dots.

### **Decision to watch . . .**

*ADNY v. Century Indemnity Company, et al.*: Appeal pending before the N.Y. App. Div.

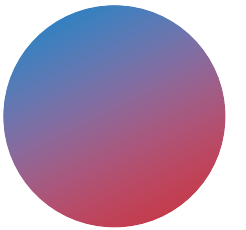






## *Industry Observations*

- Duties of utmost good faith in the reinsurance relationship
- Impact on disclosures made by ceding companies
- Effects on claims handling and legal involvement in claims
- Unity/disunity of interests between cedents and reinsurers



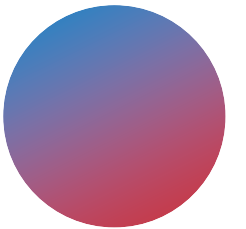
A low-angle, upward-looking photograph of several tall skyscrapers with glass facades, set against a clear blue sky. The image is overlaid with large, semi-transparent geometric shapes in shades of blue and red, creating a modern, architectural feel. The text 'DISCUSSION OF RESERVES' is centered in white, bold, sans-serif capital letters.

# DISCUSSION OF RESERVES

***U.S. Fire Ins. Co. v. Bunge North America, Inc., 244 F.R.D. 638 (D. Kan. 2007)***

**HOLDING:**

*The actual amounts of the Insurers' loss reserves - including any changes to those amounts - could, at the least, lead to admissible evidence relating to the Insurers' own beliefs about coverage and their liability, as well as their good or bad faith in handling and investigating Bunge's claims.*

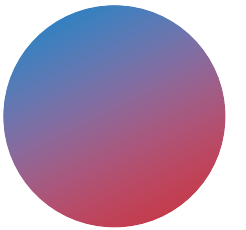




## *U.S. Fire Ins. Co. v. Bunge North America, Inc., 244 F.R.D. 638 (D. Kan. 2007)*

### **Reserves Considerations at Issue:**

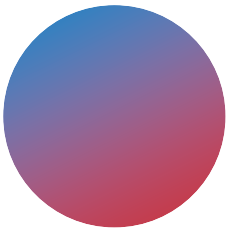
- 1. Loss reserves and timing** – could be relevant to the Insurers' positions on liability, their investigations and coverage determinations, and lost policies.
- 2. Loss reserve information** – including timing and amounts, relevant to insurers' liability assessments and potential bad faith.



## *Mandarin Oriental, Inc. v. HDI Global Insurance Co. (S.D.N.Y. June 10, 2025)*

### **HOLDING:**

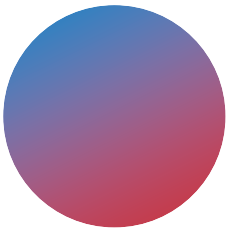
*Reserve data may yield insight into how insurers viewed their exposures, their internal evaluation of liability, and whether their conduct accords with good faith.*



## *Mandarin Oriental, Inc. v. HDI Global Insurance Co. (S.D.N.Y. June 10, 2025)*

### **Reserve Considerations at Issue:**

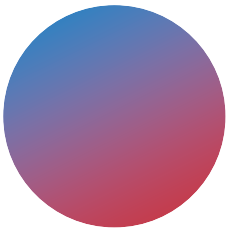
- 1. Reserve information** – Relevant; produce; no privilege shown; where bad faith is alleged.
- 2. Relevance of reserve information** – Evaluated on a case-by-case basis.





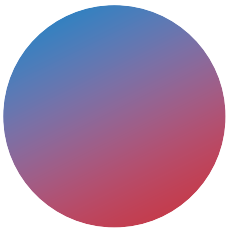
## Takeaways

- Discoverability of reserve information is determined in light of the precise issues in the case, the likelihood that reserve information would be relevant to those issues, and the demonstrated purpose of setting the reserve in the case at bar.
- Where an insured pleads bad faith and survives a motion to dismiss the bad faith claim, a court is more likely to allow discovery into reserves.
- Reserve information remains subject to attorney-client privilege and attorney work product protections, but often on a document-by-document basis.



## ***Best Practices***

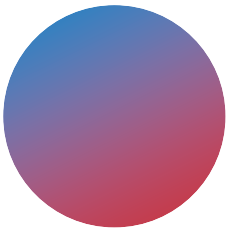
- Evaluate whether the case involves a bad faith claim.
- Conduct a thorough evaluation of bad faith claim; consider motion to dismiss at the outset.
- Evaluate the types of reserve discovery being sought to determine if the overall scope can be narrowed.
- Understand early on if insured is seeking discovery of reserves set in other like claims.
- Evaluate whether there are privileged and work product aspects to the reserve setting process.





## *Industry Observations*

- Reinsurance contract notice and reporting requirements
- Regulatory requirements
- Impact on reserving decisions and record keeping
- Adverse effect on reinsurance relationships
- Privileged aspects of reserve setting – the role of in-house counsel
- After documents, come depositions



The background features a low-angle, upward-looking view of several modern skyscrapers with glass facades. The image is overlaid with a semi-transparent blue rectangle. Within this rectangle, there are several large, overlapping geometric shapes in shades of blue and red, including circles and elongated, rounded rectangles, creating a dynamic, abstract composition.

# DISCUSSION OF PRIVILEGED COMMUNICATIONS

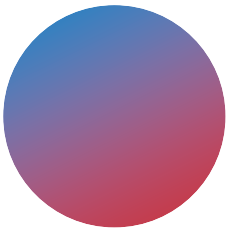




***U.S. Fire Ins. Co. v. Bunge North America, Inc., 244 F.R.D. 638 (D. Kan. 2007)***

**HOLDING:**

*Privileged Communications are subject to the ordinary burden of proof. There is no basis for a blanket protection of documents from discovery.*

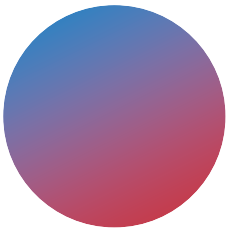


*U.S. Fire Ins. Co. v. Bunge North America, Inc.*, 244 F.R.D. 638 (D. Kan. 2007)

## **Privileged Communications Considerations at Issue:**

**1. Attorney-Client** – There is no basis for a blanket protection of documents from discovery.

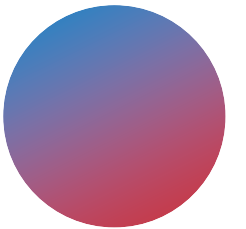
**2. Work Product** – There is no basis for a blanket protection of documents from discovery.



## *Mandarin Oriental, Inc. v. HDI Global Insurance Co. (S.D.N.Y. June 10, 2025)*

### **HOLDING:**

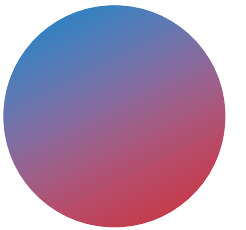
*Communications concerning reinsurance are discoverable under Rule 26(b)(1), unless protected by a properly asserted privilege.*



## *Mandarin Oriental, Inc. v. HDI Global Insurance Co. (S.D.N.Y. June 10, 2025)*

### **Privileged Communications Considerations at Issue:**

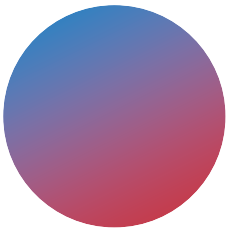
- 1. Reserve information** – Relevant; produce; no privilege shown.
- 2. No Broad Boilerplate Privilege** – Ordinary business communications are not covered.





# ***Differences Between the Litigation and Arbitration Contexts***

- (a) Less Discovery
- (b) More Industry Knowledge and Awareness
- (c) Better Tailored Discovery
- (d) Confidentiality
- (e) Benefits to Insureds and Insurers of Arbitrations.



QUESTIONS?

